

§ 1.142-3

date of the disposition to acquire replacement property for the same qualifying purpose of the issue under section 142.

(5) *Definitions.* For purposes of paragraph (c)(4) of this section, *disposition proceeds* means disposition proceeds as defined in § 1.141-12(c).

(d) *When a failure to properly use proceeds occurs—*(1) *Proceeds not spent.* For net proceeds that are not spent, a failure to properly use proceeds occurs on the earlier of the date on which the issuer reasonably determines that the financed facility will not be completed or the date on which the financed facility is placed in service.

(2) *Proceeds spent.* For net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the bonds not to be used for the qualifying purpose for which the bonds were issued.

(e) *Nonqualified bonds—*(1) *Amount of nonqualified bonds.* For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds.

(2) *Allocation of nonqualified bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer to meet the requirements of paragraph (c) of this section, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the non-

qualified bonds) occurring on the determination date.

[T.D. 8712, 62 FR 2302, Jan. 16, 1997, as amended by T.D. 9150, 69 FR 50067, Aug. 13, 2004]

26 CFR Ch. I (4-1-10 Edition)

§ 1.142-3 Refunding Issues. [Reserved]

§ 1.142-4 Use of proceeds to provide a facility.

(a) *In general.* [Reserved]

(b) *Reimbursement allocations.* If an expenditure for a facility is paid before the issue date of the bonds to provide that facility, the facility is described in section 142(a) only if the expenditure meets the requirements of § 1.150-2 (relating to reimbursement allocations). For purposes of this paragraph (b), if the proceeds of an issue are used to pay principal of or interest on an obligation other than a State or local bond (for example, temporary construction financing of the conduit borrower), that issue is not a refunding issue, and, thus, § 1.150-2(g) does not apply.

(c) *Limitation on use of facilities by substantial users—*(1) *In general.* If the original use of a facility begins before the issue date of the bonds to provide the facility, the facility is not described in section 142(a) if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(i) An official intent for the facility is adopted under § 1.150-2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(ii) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted.

(2) *Definitions.* For purposes of paragraph (c)(1) of this section, *substantial user* has the meaning used in section 147(a)(1), *related person* has the meaning used in section 144(a)(3), and a user that is a governmental unit within the meaning of § 1.103-1 is disregarded.